

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST SAINT LOUIS DIVISION**

BYRON FLEMING,)	
)	
Plaintiff,)	10-622-MJR-CJP
)	
vs.)	
)	
NCO FINANCIAL SYSTEMS, INC.,)	
)	
Defendant.)	

COMPLAINT

INTRODUCTION

1. Plaintiff Byron Fleming bring this action to secure redress from unlawful credit and collection practices engaged in by defendant NCO Financial Systems, Inc. Plaintiff alleges violation of the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”).

2. The TCPA restricts the use of automated equipment to dial cellular telephones.

VENUE AND JURISDICTION

3. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA) and 28 U.S.C. §§1331 and 1337.

4. Venue and personal jurisdiction in this District are proper because:
- a. Defendant’s collection communications were received by plaintiff within this District;
 - b. Defendant transacts business within this District.

PARTIES

5. Plaintiff Byron Fleming resides in the Southern District of Illinois.
6. Defendant NCO Financial Systems, Inc. is a corporation with principal offices located in Pennsylvania. It does business in Illinois. Its registered agent and office are CT Corporation System, 208 S. LaSalle St., Suite 814, Chicago, IL 60604.

7. NCO Financial Systems, Inc. is engaged in the business of a collection agency, using the mails and telephone to collect consumer debts originally owed to others.

FACTS

8. Defendant has been attempting to collect from plaintiff Byron Fleming an alleged debt incurred for personal, family or household purposes.

9. Defendant has placed at least twenty-three telephone calls using automated dialing equipment and recorded messages to plaintiff Byron Fleming's cellular telephone during June-August 2010, including the following:

06/27/2010	07/23/2010	08/03/2010
07/03/2010	07/24/2010	08/04/2010
07/11/2010	07/25/2010	08/05/2010
07/17/2010	07/27/2010	08/08/2010
07/18/2010	07/28/2010	08/09/2010
07/20/2010	07/29/2010	08/10/2010
07/21/2010	07/30/2010	08/11/2010
07/22/2010	08/02/2010	

10. Plaintiff did not consent to calls to the cellular telephone by providing such numbers to the creditor, or otherwise.

COUNT I – TCPA

11. Plaintiff Byron Fleming incorporates paragraphs 1-10.

12. The TCPA, 47 U.S.C. §227, provides:

§ 227. Restrictions on use of telephone equipment

... (b) Restrictions on use of automated telephone equipment.

(1) Prohibitions. It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call; . . .

13. The TCPA, 47 U.S.C. §227(b)(3), further provides:

Private right of action.

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the Court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the subparagraph (B) of this paragraph.

14. Defendant violated the TCPA by placing automated calls to plaintiff

Byron Fleming's cell phone.

WHEREFORE, plaintiff Byron Fleming requests that the Court grant the following relief in favor of plaintiff Byron Fleming and against defendant:

- (1) Statutory damages;
- (2) Costs;
- (3) Injunctive relief;
- (4) Such other and further relief as is appropriate.

s/ Daniel A. Edelman
Daniel A. Edelman

Daniel A. Edelman
Cathleen M. Combs
James O. Lattuner
Francis R. Greene
EDELMAN, COMBS, LATTURNER
& GOODWIN, L.L.C.
120 S. LaSalle Street, 18th Floor
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)

NOTICE OF LIEN AND ASSIGNMENT

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards. All rights relating to attorney's fees have been assigned to counsel.

s/Daniel A. Edelman
Daniel A. Edelman

Daniel A. Edelman
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
120 S. LaSalle Street, 18th Floor
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)

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